

Part 4

Sponsored Captive Insurance Companies

31A-37-401 Sponsored captive insurance companies -- Formation.

- (1) One or more sponsors may form a sponsored captive insurance company under this chapter.
- (2) A sponsored captive insurance company formed under this chapter may establish and maintain a protected cell to insure risks of a participant if:
 - (a) the shareholders of a sponsored captive insurance company are limited to:
 - (i) the participants of the sponsored captive insurance company; and
 - (ii) the sponsors of the sponsored captive insurance company;
 - (b) each protected cell is accounted for separately on the books and records of the sponsored cell captive insurance company to reflect:
 - (i) the financial condition of each individual protected cell;
 - (ii) the results of operations of each individual protected cell;
 - (iii) the net income or loss of each individual protected cell;
 - (iv) the dividends or other distributions to participants of each individual protected cell; and
 - (v) other factors that may be:
 - (A) provided in the participant contract; or
 - (B) required by the commissioner;
 - (c) the assets of a protected cell are not chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
 - (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive insurance company between or among any of the protected cells of the sponsored captive insurance company without the consent of the protected cells;
 - (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a protected cell to a sponsor or participant without the commissioner's approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
 - (f) a sponsored captive insurance company annually files with the commissioner financial reports the commissioner requires under Section 31A-37-106, including accounting statements detailing the financial experience of each protected cell;
 - (g) a sponsored captive insurance company notifies the commissioner in writing within 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or expense obligations of the protected cell;
 - (h) a participant contract does not take effect without the commissioner's prior written approval;
 - (i) the addition of each new protected cell and withdrawal of a participant of any existing protected cell does not take effect without the commissioner's prior written approval; and
 - (j)
 - (i) a protected cell captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and 63J-1-504:
 - (A) a fee for examining, investigating, and processing by a department employee of an application for a certificate of authority made by a protected cell captive insurance company;
 - (B) a fee for obtaining a certificate of authority for the year the protected cell captive insurance company is issued a certificate of authority by the department; and
 - (C) a certificate of authority renewal fee; and

- (ii) a protected cell may be created by the sponsor or the sponsor may create a pooling insurance arrangement to provide for pooling of risks to allow for risk distribution upon written approval from every protected cell under the sponsor and written approval of the commissioner.

Amended by Chapter 244, 2015 General Session

31A-37-402 Sponsored captive insurance companies -- Certificate of authority mandatory.

- (1) A sponsor of a sponsored captive insurance company shall be:
 - (a) an insurer authorized or approved under the laws of a state;
 - (b) a reinsurer authorized or approved under the laws of a state;
 - (c) a captive insurance company holding a certificate of authority under this chapter;
 - (d) an insurance holding company that:
 - (i) controls an insurer licensed pursuant to the laws of a state; and
 - (ii) is subject to registration pursuant to the holding company system of laws of the state of domicile of the insurer described in Subsection (1)(d)(i);
 - (e) an approved captive management firm in Utah or its affiliates; or
 - (f) another person approved by the commissioner after finding that the approval of the person as a sponsor is not inconsistent with the purposes of this chapter.
- (2)
 - (a) The business written by a sponsored captive insurance company with respect to a protected cell shall be fronted by the sponsor insurance company through a controlled unaffiliated contract or an insurer that is:
 - (i) authorized or approved:
 - (A) under the laws of a state; or
 - (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of a state;
 - (ii) reinsured by a reinsurer authorized or approved by this state; or
 - (iii) subject to Subsection (2)(b), secured by a trust fund:
 - (A) in the United States;
 - (B) for the benefit of policyholders and claimants;
 - (C) funded by an irrevocable letter of credit or other asset acceptable to the commissioner; and
 - (D) held by the sponsor as provided in Subsection 31A-17-404(1).
 - (b)
 - (i) The amount of security provided by the trust fund described in Subsection (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund, including:
 - (A) reserves for losses;
 - (B) allocated loss adjustment expenses;
 - (C) incurred but unreported losses; and
 - (D) unearned premiums for business written through the participant's protected cell.
 - (ii) The commissioner may require the sponsored captive insurance company to increase the funding of a trust established pursuant to this Subsection (2).
 - (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of credit, the letter of credit shall be established, issued, or confirmed by a bank that is:
 - (A) chartered in this state;
 - (B) a member of the federal reserve system; or
 - (C) chartered by another state if that state-chartered bank is acceptable to the commissioner.

- (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a form and upon terms approved by the commissioner.
- (3) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

Amended by Chapter 244, 2015 General Session

31A-37-403 Participants in sponsored captive insurance companies.

- (1) Any of the following may be a participant in a sponsored captive insurance company holding a certificate of authority under this chapter:
 - (a) an association;
 - (b) a corporation that is for profit or nonprofit;
 - (c) a limited liability company;
 - (d) a partnership;
 - (e) a trust; or
 - (f) any other business entity.
- (2) A sponsor may be a participant in a sponsored captive insurance company.
- (3) A participant need not be:
 - (a) a shareholder of the sponsored captive insurance company; or
 - (b) an affiliate of the sponsored captive insurance company.
- (4) A participant shall insure only the participant's own risks through a sponsored captive insurance company unless otherwise approved by the commissioner.

Amended by Chapter 244, 2015 General Session

31A-37-404 Discounting of loss and loss adjustment expense reserves.

- (1) A sponsored captive insurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.
- (2)
 - (a) A sponsored captive insurance company shall annually file with the department an actuarial opinion provided by an independent actuary on loss and loss adjustment expense reserves.
 - (b) The independent actuary described in Subsection (2)(a) may not be an employee of:
 - (i) the company filing the actuarial opinion; or
 - (ii) an affiliate of the company filing the actuarial opinion.
- (3) The commissioner may disallow the discounting of reserves by a sponsored captive insurance company if the sponsored captive insurance company violates this title.

Amended by Chapter 244, 2015 General Session